

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT, ET AL,	:	
Plaintiffs,	:	NO. 3:05CV1330(MRK)
	:	
v.	:	
	:	
MARGARET SPELLINGS, SECRETARY	:	
OF EDUCATION	:	
Defendant.	:	

RULING AND ORDER

Pending before the Court is Plaintiff State of Connecticut's Motion to File Second Amended Complaint [doc. # 72], which seeks permission to "add an administrative appeal for the denial of the State's plan amendments, to update the current status of state law and facts, and to clarify certain factual allegations." *Id.* at 1. The Secretary opposes the amendment on the basis of undue delay and prejudice. *See* Opposition to Motion for Leave to File Second Amended Complaint [doc. # 77]. As explained below, the Court disagrees with the Secretary and GRANTS the State's Motion for Leave to File Second Amended Complaint [doc. # 72].

Generally, courts should freely grant permission to amend. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a). However, where a motion to amend is filed after the deadline for amending pleadings set by a court's scheduling order has passed, the good cause standard of Rule 16 supersedes the more liberal standard of Rule 15(a). *See, e.g., Grochowski v. Phoenix Constr.*, 318 F.3d 80, 86 (2d Cir. 2003) ("Where a scheduling order has been entered, the lenient standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must be balanced against the requirement under Rule 16(b) that the Court's scheduling order 'shall not be modified except upon a showing of good cause.'").

Such a scheduling order was entered in this case on January 31, 2006, requiring the State to file any amended pleading by February 28, 2006, in accordance with the agreement reached at oral argument on the Secretary's Motion to Dismiss. *See* Scheduling Order [doc. # 36]. Although the Court fully understands the need to prevent a complaint from becoming a moving target, the Court is persuaded in this instance that the State has shown good cause for adding the proposed count to its Complaint. The count that the State seeks to add responds to an interpretation of a key provision of the No Child Left Behind Act (the statute at the center of the lawsuit) that was only offered by the Secretary in response to Plaintiff's first amended complaint at the end of March. *See* Defendant's Memorandum Regarding Plaintiff's Amended Complaint [doc. # 50]. In view of the fact that the interpretation advanced by the Secretary is not obvious from the text of the statute, and does not appear to have been employed as a matter of practice during prior interactions between the State and the Secretary, the Court agrees with Plaintiff that it could not reasonably be expected to have raised its claim prior any sooner. Further, given the early stage of this litigation, which has not progressed beyond the motion to dismiss stage, the Court is not persuaded that the Secretary will be prejudiced by allowing the State to add an additional and closely-related count – a claim that might otherwise spawn additional and redundant litigation. As to the Secretary's claim that the amendment should be disallowed as futile, judicial efficiency counsels the Court to rule on whether the fourth count could survive a motion to dismiss at the same time as it rules on the Secretary's existing motion to dismiss the first three counts.

Accordingly, the Court GRANTS the State's Motion for Leave to File Second Amended Complaint [doc. # 72]. Plaintiffs are directed to e-file the Second Amended Complaint, attached as Exhibit 2 to their Motion [doc. # 72], no later than August 1, 2006. The parties shall file any

supplemental briefs, strictly limited to addressing the changes incorporated into the Second Amended Complaint, **by August 11.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: July 31, 2006.